



AIRCRAFT MECHANICS FRATERNAL ASSOCIATION

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Via electronic mail

Ben Minicucci
Chief Executive Officer, Alaska Air Group Inc.
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Jenny Wetzel
VP Labor Relations, Alaska Airlines Co.
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Peggy Willingham
VP People, Labor & Strategy, Horizon Air Industries, Inc.
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Re: Good Faith Negotiation of Accommodation of Religious Beliefs
Related to COVID-19 Vaccination Mandate

Dear Mr. Minicucci, Ms. Wetzel and Ms. Willingham:

Alaska Air Group Inc. (Alaska Airlines Inc. & Horizon Air Industries Inc.; hereinafter together "Alaska") has recently announced that it is subject to legal obligation, as a federal contractor, to require that its employees submit to a compulsory vaccination process that must be completed by December 8, 2021. We write at this time to address two issues:

- 1) That the Company **furnish the necessary documentary evidence to confirm** that its federal contracts are subject to a renewal or re-opener such that the December 8 deadline would apply; and
- 2) That the Company **immediately commence negotiations with AMFA** to address the reasonable accommodations that will be provided to individuals who object to vaccination based on sincerely held religious beliefs or disability.

1) Vaccination Deadline

On September 9, 2021, President Biden signed Executive Order 14042, which mandated the development of "COVID-19 safeguards" applicable to federal contractors. The required safeguards become enforceable on private employers via their insertion into any new contract or contract extension/renewal with a federal agency.

Pursuant to the Executive Order, on September 24, 2021, the Safer Federal Workforce Task Force (Task Force) issued Guidance for Federal Contractor and Subcontractors (Guidance), which provided that federal contractors will be required to provide for the vaccination of their employees “except in limited circumstances where an employee is legally entitled to an accommodation” based on religious beliefs or disability, which would include medical conditions. Employees are deemed “fully vaccinated” two weeks after their completion of a two-dose or single dose vaccination process.

By its own terms, the Executive Order became effective “immediately.” The Guidance more specifically provides that covered contractor employees must be fully vaccinated no later than December 8, 2021. However, because the mandate is contractually triggered, it would appear that contractors who are in the middle of a contract would not be required to implement the new program until the existing contract is extended or renewed. Indeed, the Guidance states that, after December 8, “all covered contractor employees must be fully vaccinated by the first day of the period of performance on a *newly awarded covered contract*, and by the first day of the period on an exercised option or extended or renewed contract *when the clause has been incorporated in the covered contract.*”

In view of the referenced language from the Guidance, we require that you furnish AMFA with the contract(s) that embodies the implementing vaccination language. To the extent no contract yet exists incorporating such language, no federal vaccination mandate would be in effect. It is our position that any AMFA-represented employee who is discharged based on his non-vaccinated status prior to the effective date of Alaska’s federal contractor obligation would be terminated without just cause.

2) Negotiations re Religious/Disability Accommodation

With respect to religion and disability-based accommodations, the Guidance provides that the contractor is responsible for evaluating such requests regardless of the employee’s place of performance. The Guidance appropriately recognizes that the Executive Order is subordinate to federal statutory law.

Title VII of the Civil Rights Act of 1964 is a federal law that, *inter alia*, prohibits employment discrimination based on religious belief. 42 U.S.C. § 2000e-2. The Act broadly defines the term “religion” to include “all aspects of religious observance and practice, as well as belief...” 42 U.S.C. § 2000e(j). Consistent with this statutory definition, the Equal Employment Opportunity Commission has promulgated the following regulatory standard:

In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices *to include moral or ethical beliefs as to what is right and wrong* which are sincerely held with the strength of traditional religious views.

* * *

The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee.

29 C.F.R. § 1605.1.

“Title VII’s protections are not limited to beliefs and practices that courts perceive as ‘acceptable, logical, consistent, or comprehensible to others,’” nor do E.E.O.C. guidelines on religious discrimination require a specific religious group to advocate the belief of the individual employee. *Cloutier v. Costco Wholesale*, 311 F. Supp.2d 190, 196 (quoting *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981)) (citing 29 C.F.R. § 1605.1).

As the United States Supreme Court has held with respect to a court’s evaluation of asserted religious beliefs:

In such an intensely personal area, of course, the claim of the [adherent] that his belief is an essential part of a religious faith must be given great weight. . . . The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant’s ‘Supreme Being’ or the truth of his concepts. But these inquiries are foreclosed to Government.

United States v. Seeger, 380 U.S. 163, 184 (1965).¹

Once an employee has established that he/she has a sincerely held religious belief, practice or observance that would prevent him/her from obtaining a COVID vaccination, the employer has an affirmative duty to accommodate that individual provided that it would not impose an *undue hardship* on the operation of the employer’s business. 42 U.S.C. § 2000e(j). The accommodation process should include the religious objector in an interactive dialogue. *Thomas v. National Ass’n of Letter Carriers*, 225 F.3d 1149, 1155 (10th Cir. 2000) (“This statutory and regulatory framework [of Title VII], like the statutory and regulatory framework of the Americans with Disabilities Act (ADA), involves an interactive process that requires participation by both the employer and the employee.”); *EEOC v. Ithaca Industries, Inc.*, 849 F.2d 116, 118 (4th Cir. 1988) (noting that the district court “found, as a matter of fact, that [the employer] made

¹ While the *Seeger* decision involved the application of a conscientious objector to avoid military service, the Court’s standard of judicial analysis of religious belief has been widely applied in the Title VII context and adopted by the EEOC. (29 C.F.R. § 1605.1).

no *specific* effort to accommodate [the employee]"); *Jamil v. Sessions*, 2017 U.S. Dist. LEXIS 31815, *26 (E.D.N.Y. March 6, 2017); *Elmenayer v. ABF Freight Sys.*, 2001 U.S. Dist. LEXIS 15357, 2001 WL 1152815, at *5 (E.D.N.Y. Sept. 20, 2001), *aff'd*, 318 F.3d 130 (2d Cir. 2003); *EEOC v. Aldi*, 2008 U.S. Dist. LEXIS 25206, 2008 WL 859249 (W.D. Pa. Mar. 27, 2008); *Kenner v. Domtar Industries, Inc.*, 2006 U.S. Dist. LEXIS 14478, 2006 WL 662466 (W.D. Ark. March 13, 2006).

The EEOC has recognized that reasonable accommodation of an unvaccinated employee's religious exemption might include preventive measures such as social distancing, periodic tests for COVID-19 and wearing a face mask or other protective gear. EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* at K.2 (May 28, 2021).²

The statutory duty to bargain is at least as broad under the RLA as it is under the NLRA. *See, e.g., First National Maintenance*, 452 U.S. 666, 686, n. 23 (1981). As a general matter, employees' health benefits are a mandatory subject of bargaining about which an employer has an obligation to bargain in good faith under the NLRA. *E.I. DuPont De Nemours, Louisville Works*, 355 NLRB 1084 (2010) *enf. denied* 682 F.3d 65, 401 U.S. App. D.C. 172 (D.C. Cir. 2012); *United Hosp. Medical. Center.*, 317 NLRB 1279, 1281 (1995). The same should result under the RLA. *See, Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969) (noting that "[t]he Court has in the past referred to the NLRA for assistance in construing the Railway Labor Act"); *Hawaiian Airlines v. Norris*, 512 U.S. 246, 263 & n. 9 (1994) (recognizing that the two statutes differ in "language, history, and purpose," but adopting under the RLA the NLRA standards for whether state law claims are preempted).

Because the implementation of a compulsory vaccination program prior to the existence of any federal mandate, and the scope of the reasonable accommodation provided for religious objections and the disabled once these vaccinations begin, both impact on the terms and conditions of employment of AMFA members, we request the immediate initiation of negotiations to address these issues.

Sincerely,



Earl Clark

AMFA Region I Director

² <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

cc:

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